

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35743

APPLICATION OF THE NATIONAL RAILROAD PASSENGER CORPORATION UNDER
49 U.S.C. § 24308(a)—CANADIAN NATIONAL RAILWAY COMPANY

Decided: March 26, 2015

On July 30, 2013, the National Railroad Passenger Corporation (Amtrak) filed an application under 49 U.S.C. § 24308(a)(2) seeking: (1) the institution of a proceeding and a procedural schedule to determine reasonable terms and compensation for Amtrak's use of Illinois Central Railroad Company and Grand Trunk Western Railroad Company (collectively, Canadian National Railway Company (CN)) facilities (including rail lines) and services, making those new terms and compensation retroactively effective as of August 12, 2013;¹ and (2) an interim service order, effective August 12, 2013, requiring CN to continue to make available to Amtrak the facilities and services necessary for Amtrak to continue to operate on CN rail lines under the same terms and compensation as the current Amtrak-CN contract.²

In a decision served on August 9, 2013, the Board instituted a proceeding to establish reasonable terms and compensation for Amtrak's use of CN's facilities and services. Application of the Nat'l R.R. Passenger Corp. under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry., slip op. at 3 (STB served Aug. 9, 2013). The Board also adopted CN's offer (made in its August 1, 2013 letter) to continue providing facilities and services to Amtrak on an interim basis under the terms of the existing contract. *Id.* Subsequently, the Board adopted the procedural schedule proposed by Amtrak and CN and granted the parties' joint motion for a protective order. The Board also granted several extensions of the procedural schedule to facilitate the parties' discovery process. In addition, the Board issued decisions addressing discovery disputes on April 15, 2014, and September 23, 2014. In the September 23 decision, the Board modified the procedural schedule by ordering Amtrak to file a notice with the Board when production to CN is complete and stating that opening submissions would be due 30 days from the completion of discovery. Application of the Nat'l R.R. Passenger Corp. under 49 U.S.C. § 24308(a)—Canadian Nat'l Ry., slip op. at 11-12 (STB served Sept. 23, 2014).

¹ The agreement between Amtrak and CN that governed terms and compensation expired on August 11, 2013, and Amtrak therefore requested that the Board's orders be retroactively effective as of August 12, 2013. *See* Application at 1-2.

² CN responded to Amtrak's application by letter on August 1, 2013, and by formal reply on August 19, 2013.

On December 2, 2014, CN filed its third motion to compel responses to discovery requests. Amtrak replied on December 10, 2014, that it was “willing to produce substantially all of the additional information CN has requested as narrowed by the language of the Third Motion to Compel”³ and that it was prepared to provide the discovery responses no later than December 23, 2014.⁴

In a February 3, 2015 decision, the Board ordered the parties to inform the Board by February 10, 2015, of the extent to which discovery regarding the issues raised in CN’s third motion to compel had progressed since Amtrak’s December 10 reply, and ordered CN to indicate how, in light of any such progress, CN requests that the Board proceed with the pending motion. In its update, Amtrak claims that it produced ridership and revenue data for the Amtrak passenger services that run on CN’s lines for the relevant time period, but that it withheld three data fields that would disclose pricing and ticket-specific revenue. CN claims in its update that Amtrak failed to produce sufficient revenue information. CN therefore requests that the Board grant the third motion to compel with respect to revenue information and dismiss the third motion as to ridership information.

In a March 6, 2015 filing, Amtrak states that its discovery production is complete. In its March 9, 2015 filing, however, CN replies that discovery is not complete because Amtrak refused to produce the revenue information at issue in CN’s third motion to compel. CN also explains that it received approximately 10,000 documents from Amtrak on March 6, 2015, and that CN therefore needs time to examine the documents and determine whether it intends to ask the Board to compel any additional production.

On March 13, 2015, Amtrak filed a letter requesting that the Board clarify the due date for opening submissions. On March 16, 2015, CN filed a fourth motion to compel, in which CN asks that the Board order Amtrak to produce five additional items or sets of items and claims that discovery should not be considered complete until Amtrak has produced the items.

Given that multiple discovery disputes remain outstanding, discovery is not complete. Therefore, Amtrak’s March 6 filing did not trigger the start of the procedural schedule described in the Board’s September 23 decision. The Board will address the procedural schedule in a future decision.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

³ Amtrak Reply to Third Motion to Compel 7.

⁴ Id. at 8.

It is ordered:

1. Because discovery disputes remain outstanding, the procedural schedule set forth in the September 23 decision has not begun. The Board will address the procedural schedule in a future decision.

2. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.